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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/905,670	07/13/2001	Phillip D. Purdy	UTSD:798US	4825
32425 7590 03/05/2008 FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701				
EXAMINER MACNEILL, ELIZABETH				
ART UNIT		PAPER NUMBER		
3767				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/905,670

Applicant(s)

PURDY, PHILLIP D.

Examiner

ELIZABETH R. MACNEILL

Art Unit

3767

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-11, 13-16, 21-24, 27, 28 and 65-69 is/are pending in the application.
- 4a) Of the above claim(s) 9, 10 and 14-16 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22, 23, 65 and 66 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 13, 21, 24, 27, 28 and 67-69 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-3, 13, 22, 24, and 27, 28 are rejected under 35 U.S.C. 102(a) as being anticipated by Hamada et al (Micro catheter...).

Hamada et al teaches a method of navigating the spinal subarachnoid space using a guidewire and a micro catheter to advance the catheter over the guide wire to the intracranial space (pg 2142, "Intrathecal Advancement of the Micro catheter"). As to claim 2,3 a portion of intracranial CSF is removed (pg 2142) to flush blood from the cisterna magna.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 7,8,11,are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada as applied to claim 1 above, and further in view of Harper et al (US 6,436,091). As to claim 7-8, Hamada does not teach a second passageway.

Harper teaches a subarachnoid catheter with first (652) and second (654) passageways.

Harper does not teach an endoscope. The use of an endoscope or a second passageway is well known to aid in navigation within the body. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use a second passageway with an endoscope to navigate the subarachnoid space.

As to claim 11, see 668, Fig 9A.

5. Claims 5,6,68,69 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada as applied to claim 1 above, and further in view of Barbut et al (US 6,379,331).

Hamada does not disclose inducing hypothermia, altering the temperate of some brain tissue, or applying heat to tissue.

Barbut teaches using a catheter that is disposed in the subarachnoid space to cool and flush the CSF (which also contacts the brain, thereby cooling some brain tissue). Later, the CSF must be reheated to restore physiologic conditions to the patient.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the catheter of Harper to cool or heat the CSF since altering the temperature of the CSF has therapeutic benefits (such as during surgery or following spinal trauma, Col 1 line 15).

6. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hamada in view of Hofmann et al (US 6,330,466).

Hamada does not teach placing an electrode on or in brain tissue. Hofmann teaches a probe/electrode capable of use in the nervous system which measures neuron activity. It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the detector of Hofmann in order to monitor the patient's neurons around the pump and quickly detect any adverse reactions to the implant, catheter, or medicament.

Allowable Subject Matter

7. Claims 22, 23, 65, and 66 are allowed.

Election/Restrictions

8. Claims 9,10, 14-16 withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim.

Response to Arguments

9. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MACNEILL whose telephone number is (571)272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/E. R. M./

Examiner, Art Unit 3767

/Kevin C. Simmons/

Supervisory Patent Examiner, Art Unit 3767